

AMENDED IN ASSEMBLY JUNE 11, 2014  
AMENDED IN SENATE JANUARY 27, 2014

**SENATE BILL**

**No. 210**

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**Introduced by Senator Hancock**

February 11, 2013

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An act to amend Sections 1275 and 1318.1 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 210, as amended, Hancock. Criminal procedure: pretrial release.

(1) Existing law requires a judge or magistrate, in setting, reducing, or denying bail, to take into consideration the protection of the public, the seriousness of the offense, the defendant's previous criminal record, and the probability of the defendant appearing at trial or a hearing.

This bill would revise the factors that the judge or magistrate would be required to consider to, among other things, require the judge or magistrate to consider the history and characteristics of the defendant, and to consider the nature and circumstances of the offense. The bill would require a judge or magistrate to also consider those factors when determining conditions for pretrial release.

(2) Existing law authorizes a court, with the concurrence of the county board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. In cases involving certain crimes, including violent felonies, an investigative report is required to be prepared that includes specified information, including outstanding warrants against the defendant and prior incidents where the defendant has failed to make a court appearance.

This bill would also authorize a sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ an investigative staff for those purposes, and would require a pretrial investigative report to be prepared before a court may order a defendant released on his or her own recognizance in any case involving specified crimes, including a violent felony. The bill would authorize the preparation of a pretrial investigation report in all other cases in which a court, sheriff, county probation department, or other local governmental agency has employed an investigative staff to recommend whether the defendant should be released on his or her own recognizance. The bill would require any pretrial investigative report to include the results of an evidence-based pretrial risk assessment, as defined, evaluating the defendant's probability of appearing at trial and potential risk to public safety. The bill would prohibit, for purposes of preparing the report, a defendant from being interviewed about the facts and circumstances of the defendant's current offense. The bill would authorize a court, sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ supervision staff to monitor a defendant's compliance with release conditions ordered by the court, as specified.

(3) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make legislative findings and declarations relating to, among other things, the necessity of treating pretrial investigation reports as confidential in order for pretrial programs to function properly.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Pretrial custody reform is urgently needed in California,
- 4 where the pretrial population far exceeds the national average of
- 5 61 percent. More than 71 percent of the 71,000 Californians held
- 6 in county jails statewide on any given day are awaiting trial.

1 (b) Pretrial custody reform will support the implementation of  
2 public safety realignment by providing counties greater flexibility  
3 in managing their pretrial populations using best practices  
4 developed over many years across many jurisdictions.

5 (c) Pretrial services programs have been successfully  
6 implemented in many jurisdictions, and have helped to reduce the  
7 pretrial jail populations, save money, reduce recidivism, and protect  
8 the public.

9 (d) Increasing the use of evidence-based practices in pretrial  
10 population management programs will allow better empirical  
11 analysis in pretrial decisions, and will help to ensure that the court's  
12 decision to order release, conditions of release, and bail is based  
13 on a credible assessment of the defendant's risk to public safety  
14 and the likelihood of appearance as required.

15 (e) In order for pretrial programs to function properly and to  
16 protect the rights of persons submitting sensitive information, it  
17 is essential to treat pretrial investigation reports as confidential so  
18 the reports are used only for release, bail, and monitoring  
19 considerations.

20 SEC. 2. Section 1275 of the Penal Code is amended to read:

21 1275. (a) (1) In determining conditions for pretrial release,  
22 and in setting, reducing, or denying bail, a judge or magistrate  
23 shall, on the available information, take into consideration the  
24 protection of the public, the nature and circumstances of the offense  
25 charged, the history and characteristics of the defendant, the  
26 previous criminal record of the defendant, including whether the  
27 defendant was, at the time of arrest for the charged offense, on  
28 probation, parole, or other form of release pending trial, sentencing,  
29 or appeal, and the probability of his or her appearing at trial or  
30 hearing of the case, including the defendant's record of appearance  
31 at past court hearings or of flight to avoid arrest or prosecution.  
32 Public safety and the safety of the victim shall be the primary  
33 consideration. In setting bail, a judge or magistrate may consider  
34 factors such as the information included in a report prepared in  
35 accordance with Section 1318.1.

36 (2) In considering the nature and circumstances of the offense  
37 charged, a judge or magistrate shall include consideration of the  
38 alleged injury to the victim, and alleged threats to the victim or a  
39 witness to the crime charged, the alleged use of a firearm or other

1 deadly weapon in the commission of the crime charged, and the  
2 alleged use or possession of controlled substances by the defendant.

3 ~~(3) In considering the history and characteristics of the~~  
4 ~~defendant, the judge or magistrate may consider any of the~~  
5 ~~following:~~

6 ~~(A) The ties of the defendant to the community, including his~~  
7 ~~or her employment, the duration of his or her residence, and the~~  
8 ~~defendant's family attachments.~~

9 ~~(B) The defendant's current educational or vocational program~~  
10 ~~enrollment and participation.~~

11 ~~(C) The physical and mental condition of the defendant and the~~  
12 ~~defendant's history related to dependence on alcohol or controlled~~  
13 ~~substances, including past and current participation in substance~~  
14 ~~abuse programs and counseling.~~

15 *(3) In considering the history, characteristics, and previous*  
16 *criminal record of the defendant, the judge or magistrate may*  
17 *consider the results of an evidence-based pretrial risk assessment*  
18 *instrument that is predictive of the defendant's risk to public safety*  
19 *and the probability of him or her failing to appear at court*  
20 *hearings.*

21 (b) In considering offenses wherein a violation of Chapter 6  
22 (commencing with Section 11350) of Division 10 of the Health  
23 and Safety Code is alleged, a judge or magistrate shall consider  
24 the following: (1) the alleged amounts of controlled substances  
25 involved in the commission of the offense, and (2) whether the  
26 defendant is currently released on bail for an alleged violation of  
27 Chapter 6 (commencing with Section 11350) of Division 10 of the  
28 Health and Safety Code.

29 (c) Before a court reduces bail to below the amount established  
30 by the bail schedule approved for the county, in accordance with  
31 subdivisions (b) and (c) of Section 1269b, for a person charged  
32 with a serious felony, as defined in subdivision (c) of Section  
33 1192.7, or a violent felony, as defined in subdivision (c) of Section  
34 667.5, the court shall make a finding of unusual circumstances and  
35 shall set forth those facts on the record. For purposes of this  
36 subdivision, "unusual circumstances" does not include the fact  
37 that the defendant has made all prior court appearances or has not  
38 committed any new offenses.

39 SEC. 3. Section 1318.1 of the Penal Code is amended to read:

1 1318.1. (a) A court, sheriff, county probation department, or  
2 other local governmental agency, with the concurrence of the board  
3 of supervisors, may employ an investigative staff for the purpose  
4 of recommending whether a defendant should be released on his  
5 or her own recognizance.

6 (b) (1) Whenever a court, sheriff, county probation department,  
7 or other local governmental agency has employed an investigative  
8 staff pursuant to subdivision (a), before a court may order a  
9 defendant released on his or her own recognizance in any case  
10 involving a violent felony, as described in subdivision (c) of  
11 Section 667.5, or a felony in violation of subdivision (a) of Section  
12 23153 of the Vehicle Code, a pretrial investigative report shall be  
13 prepared recommending whether the defendant should be released  
14 on his or her own recognizance. The report shall include all of the  
15 following:

16 ~~(1)~~

17 (A) Written verification of any outstanding warrants against the  
18 defendant.

19 ~~(2)~~

20 (B) Written verification of any prior incidents where the  
21 defendant has failed to make a court appearance.

22 ~~(3)~~

23 (C) Written verification of the criminal record of the defendant.

24 ~~(4)~~

25 (D) Written verification of the residence of the defendant during  
26 the past year.

27 ~~After~~

28 (2) *After* the report is certified pursuant to this subdivision, it  
29 shall be submitted to the court for review, prior to a hearing held  
30 pursuant to Section 1319.

31 (c) Whenever a court, sheriff, county probation department, or  
32 other local governmental agency has employed an investigative  
33 staff pursuant to subdivision (a), a pretrial investigation report may  
34 be prepared in any case not involving a violent felony, as described  
35 in subdivision (c) of Section 667.5, or a felony in violation of  
36 subdivision (a) of Section 23153 of the Vehicle Code,  
37 recommending whether the defendant should be released on his  
38 or her own recognizance. Only one agency authorized pursuant to  
39 subdivision (a) shall issue a pretrial investigation report.

1 (d) Any report prepared pursuant to subdivision (b) or (c) shall  
2 include all of the results of an evidence-based pretrial risk  
3 assessment evaluating the defendant's probability of appearing at  
4 trial and potential risk to public safety. "Evidence-based pretrial  
5 risk assessment" is the objective, standardized analysis of  
6 information about a pretrial defendant in a way that is consistent  
7 with and guided by the best available scientific evidence and  
8 professional knowledge that measures the defendant's probability  
9 of appearing at trial and the potential risk to public safety while  
10 pending case disposition.

11 (e) In preparing the report pursuant to subdivision (b) or (c),  
12 the defendant shall not be interviewed about the facts and  
13 circumstances of the current offense, and any information that a  
14 defendant may provide shall not be included in the report. Any  
15 information provided by the defendant shall be used solely for the  
16 purposes of determining whether the defendant should be released  
17 on his or her own recognizance or in setting the conditions of the  
18 defendant's release or modifying a prior release order. The reports  
19 may be filed as part of the case record.

20 (f) A court, sheriff, county probation department, or other local  
21 governmental agency may, with the concurrence of the board of  
22 supervisors, employ supervision staff to monitor the defendant's  
23 compliance with the release conditions ordered by the court.  
24 Supervision staff may do any of the following:

25 (1) Notify the defendant of court appearance obligations.

26 (2) Require the defendant to report periodically by mail,  
27 telephone, or personal appearance to verify compliance with release  
28 conditions.

29 (3) Monitor and assist the defendant with complying with  
30 release conditions.

31 (4) Supervise a defendant placed on home detention, with or  
32 without electronic monitoring, as a condition of release.

33 (5) Promptly report violations of release conditions to the court.

34 (6) Provide information to assist any law enforcement officer  
35 with detaining a defendant supervised pursuant to this section and  
36 for whom a bench warrant has been issued.

37 (g) The salaries of the staff are a proper charge against the  
38 county.

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